United Nations S/2006/281

Security Council

Distr.: General
19 May 2006

Original: English

Letter dated 4 May 2006 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

The Counter-Terrorism Committee has received the attached fifth report from South Africa submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Ellen Margrethe **Løj**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

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Annex

Note verbale dated 26 April 2006 from the Permanent Mission of South Africa to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

The Permanent Representative of the Republic of South Africa to the United Nations presents his compliments to the Chairperson of the Counter-Terrorism Committee established pursuant to Security Council resolution 1373 (2001) and has the honour to respond to the points raised in the latter's letter of 16 November 2005. The enclosure attached herewith constitutes the fifth report of the Government of South Africa on the steps taken to implement resolution 1373 (2001) and also reports on measures taken to implement resolution 1624 (2005) (see enclosure).

Enclosure

South Africa's reply to the letter dated 16 November 2005 received from the Chairperson of the Security Council's Counter-Terrorism Committee, Ambassador E.M. Løj, containing comments on South Africa's national report (S/2004/170) submitted pursuant to paragraph 6 of Security Council resolution 1373 (2001)

1. Implementation measures

Effectiveness in the protection of financial systems

1.1 The Committee would appreciate receiving further clarification as regards whether at present the reporting of suspicious transactions are made to the Financial Intelligence Centre after the enactment of Financial Intelligence Centre Act of 2001 and no longer to a person designated by the Minister of Justice as per section 7 of the Prevention of Organised Crime Act of 1998. If in the affirmative, please provide the Committee with the number of suspicious financial transactions reported to the Financial Intelligence Centre by:

- Financial institutions
- Institutions listed in schedule 1 of the Financial Intelligence Centre Act of 2001

1.1 As indicated in the fourth report by the Government of South Africa to the Counter-Terrorism Committee (S/2004/170), suspicious transactions reports (STRs) have been made to the Financial Intelligence Centre since February 2003.

The following number of reports were made to the Financial Intelligence Centre:

2003 = 991
2004 = 7480
2005 = 15 757 (for the financial year ending 31 March 2005)
Total = 24 228

Of these reports 14 748 were received from financial institutions and 1009 were received from non-financial institutions including estate agents, attorneys, casinos and vehicle dealers as well as other businesses and individuals.

The 2005/2006 statistics are currently being finalised, however the FIC has received an excess of 42 000 reports since inception.

The STRs received during this period contained information concerning suspicions relating to a wide range of criminal activities.

1.2 According to section 23 of the Protection of Constitutional Democracy Against Terrorist and Related Activities (POCDATARA) Act, a High Court may, on *ex pa te* application by the National Director to a judge in chambers, issue an order that may include the freezing of any property where there are reasonable grounds to believe that it is owned or controlled by, on behalf or at the direction of an entity associated with terrorism. The Committee would appreciate further information on the following points:

1.2.1 What mechanisms exist to freeze, without delay, funds suspected of being linked to terrorism, bypassing lengthy procedures and preventing the movement of such funds to their intended destination? Does the Financial Intelligence Centre have the power to freeze funds promptly on a temporary basis?

1.2.2 For what period of time can a High Court order and sustain a prohibition on action in respect of property suspected of being associated with terrorism?

1.2.1 The Financial Intelligence Centre (FIC) may direct an institution to freeze funds for a maximum period of five days, if it has reason to believe that a transaction or a proposed transaction may involve the proceeds of unlawful activities or property which is connected to an offence relating to the financing of terrorist activities. (Section 34(1) of the Financial Intelligence Centre Act, 2001 ("the FIC Act")).

Section 4(2) of the Protection of Constitutional Democracy against Terrorism and Related Activities Act, 2004 ("the POCDATARA Act"), makes it an offence to deal in any manner with property associated with the financing of terrorism. This amounts to an automatic and immediate freezing of such property upon a person being identified as an entity which commits or facilitates the commission of terrorist or terrorist financing activities.

In addition, section 23(1) of the POCDATARA Act provides for a mechanism to mitigate the consequences of a person contravening section 4 by enabling a court to issue an order to prevent further dealing with the property in question.

1.2.2 No period is prescribed for the validity of an order under section 23 of the POCDATARA Act, which means that such an order remains effective indefinitely or until it is challenged or the Court is requested to rescind the order.

1.3 Section 12 (6) of the POCDATARA Act stipulates that a police official who is notified of a suspect transaction may direct the informant (notaries, lawyers, etc.) not to carry out a related transaction for a period of up to five days. Would South Africa please explain what processes or directives are followed by police officials who are notified of such information and what mechanisms exist for the police to investigate links between suspect property or funds and terrorism? Also, what operational mechanisms exist to allow the police to monitor proactively and to ensure compliance from intermediaries? What role is envisaged for the Financial Intelligence Centre when the police are informed of suspicious transactions?

1.3 The National Commissioner of the South African Police Service (SAPS) published in the Government Gazette the format in which a matter contemplated in section 12(1) of the POCDATARA Act must be reported. In terms of these provisions such reports must be forwarded by the police official who receives such a report to the Serious and Violent Crime Investigating Unit of SAPS as well as its Crime Intelligence Division. These specialised units are fully equipped to deal with and investigate such information.

The Financial Intelligence Centre does not have law enforcement powers, but plays a supportive role as the Centre receives requests for information from the SAPS with regards to these reports.

1.4 The second report (p. 5, para. 8) states that South Africa intends to introduce the power to monitor transactions of persons or organisations on the basis of suspected involvement in the financing of terrorism. This intention is a follow-up to paragraph 35 of the Financial Intelligence Centre Act, which allows for monitoring of transactions involved in money laundering and other illegal activities, but not those associated with terrorism. The Committee has studied the recently enacted POCDATARA Act and has found no reference to the power envisaged by South Africa in its second report. Would South Africa please provide information on any other provisions that empower the Financial Intelligence Centre, or any other agency, to monitor the transactions of suspect persons or organisations?

1.4 The POCDATARA Act amended the Financial Intelligence Centre (FIC) Act so as to provide for matters pertaining to financing of terrorist activities. These amendments are contained in the Schedule to the POCDATARA Act and include amendments to section 35 of the FIC Act to allow the issuing of a monitoring order in respect of an account on the basis that there are reasonable grounds to believe that a

person is involved in the financing of terrorist and related activities or that the account is abused for the financing of terrorist or related activities.

1.5 The Committee takes note of Regulations 3 (1) (d) and 10 (1) (c) of the Exchange Control Regulations Act, which prohibit the transfer of funds by any person to other countries, and empowers the Investigations Division of the Exchange Control Department to investigate alleged contraventions. Could South Africa please inform the Committee of the penalties imposed on violators of these regulations?

1.5 The South African Reserve Bank's Exchange Control Department levies the penalties, which vary depending on the nature and extent of the contraventions. Private individuals who have contravened exchange control regulations will be charged a levy of between 20% and 40%, subject to the individual's choice to repatriate their illegal offshore funds or not. These levy parameters for private individuals were decided upon by the National Treasury and the South African Reserve Bank and are disclosed to the public on the South African Reserve Bank's website. The levy for corporations will be between 10% and 30%, based on the extent of the contravention. The parameters for corporations are decided by the South African Reserve Bank and are not disclosed to the public.

The determination of the final levy for both private individuals and corporations, within the parameters, is at the discretion of the South African Reserve Bank Exchange Control Department. Further, in cases where the contravention was done through certain illegal structures, the South African Reserve Bank's Exchange Control Department will also require that such illegal structures be unwound.

1.6 In the past, many terrorists have utilised religious, cultural and other non-profit and charitable organisations to transfer money and thereby to fund their operations. On page 7 of the third report, South Africa mentions that under the Non-Profit Organisation Act of 1997, charitable organisations are not required to register with the Government, nor are their records, finances and activities brought to the Government's attention in any form. The Committee considers it vital for all countries to establish basic registration, auditing and investigative mechanisms for charitable, social and other non-profit organisations in order to prevent them from being used for terrorist purposes. Could South Africa please inform the Committee of any steps and measures that it has taken or plans to take in this regard?

1.6 Non-profit organisations (NPOs) in South Africa take on many forms ranging from relatively small voluntary associations with localised operations to well-organised non-governmental organisations and charities. The better-established organisations are usually incorporated formally as non-profit legal persons. Many non-profit

organisations are registered with the South African Revenue Service for tax exempt status. It is estimated that there are 500 000 non-profit organisations in South Africa. These include community-based organisations (CBOs) and non-governmental organisations (NGOs).

NPOs can be structured either as:

(1) Ordinary non-profit organisations, which are subject to common law and do not have to be registered with any government Department, or as

(2) Trusts, which are subject to a combination of common law and statute (Trust Property Control Act) and are registered with any of the eleven offices of the Master of the High Court in South Africa, or as

(3) Section 21 (S21) companies, which are registered in terms of the Companies Act, No. 61 of 1973, and are registered with and regulated by the Department of Trade and Industry (DTI).

Any of these three types of non-profit organisations may register with the Department of Social Development under the Non-Profit Organisations Amendment Act, No. 17 of 2000. Registration under that Act is not compulsory but is desirable if the organisation intends to apply for tax exemption from the South African Revenue Service.

Section 1 of the Non-Profit Organisations Act defines non-profit organisations as a trust, company or other association of persons - established for a public purpose and the income and property of which are not distributable to its members or office-bearers except as reasonable compensation for services rendered. This definition also includes charitable organisations, which are registered as NPOs. Accordingly, all registered NPOs are under obligation to submit annual reports (i.e. narrative and financial) nine months after the end of the financial year to the Department of Social Development (section 18).

Those NPOs that are S21 companies are administered by the DTI and are regulated in terms of the Companies Act and are obliged under this Act to appoint auditors and have their financial statements audited annually. The Act also lays a foundation for corporate governance, which is similar to that which applies to public companies. The DTI has currently approximately 13 000 S21 companies registered with the Companies and Intellectual Property Registration Office (CIPRO).

The South African Government is currently satisfied with the operation of existing mechanisms.

1.7 Paragraph 28 of the Financial Intelligence Centre Act requires "accountable and reporting institutions" to notify the Financial Intelligence Centre of cash transactions above the prescribed limit. The Committee would like to know whether charitable and other non-profit organisations, which may or may not be registered with the Government, are considered as 'accountable and reporting institutions,' and thus as required to report to the Financial Intelligence Centre under this provision.

1.7 Non-profit organisations and other charitable organisations are not considered to be accountable, nor reporting institutions, in terms of the Financial Intelligence Centre Act.

1.8 The Committee notes the establishment of special investigative and prosecuting units such as the Directorate for Special Operations and the Asset Forfeiture Unit to combat organised crime and money-laundering (page 8 of the fourth report). Could South Africa please provide details on the roles, functioning, authorities and notable successes of these special agencies?

1.8 The roles, functioning, authorities and notable successes of the Asset Forfeiture Unit and the Directorate for Special Operations can be outlined as follows:

Asset Forfeiture Unit

The Asset Forfeiture Unit was established in May 1999 in the Office of the National Director of Public Prosecutions to give effect to chapters 5 and 6 of the Prevention of Organised Crime Act, No. 121 of 1998. These two chapters make provision for the seizure of proceeds and instrumentalities of crimes. Chapter 6 also provides for the freezing and forfeiture of property associated with terrorism, pursuant to amendments effected by the POCDATARA Act.

The Asset Forfeiture Unit has partnerships with law enforcement agencies such as the South African Police Service, Directorate of Special Operations and the South African Revenue Service. The Asset Forfeiture Unit has established national regional offices in all major centres.

Successes include the seizure of cash associated with drug trafficking, the seizure of property used in drug trafficking and other crimes, the seizure of vessels used in the poaching of natural resources, targeting organised crime, corruption and serious economic crime.

Directorate of Special Operations

The Directorate of Special Operations was established in January 2001 in the Office of the National Director of Public Prosecutions in order to investigate and prosecute crimes committed in an organised fashion. The Directorate of Special Operations has offices in all major centres in South Africa.

The Directorate of Special Operations' focus areas have been defined to include complex financial crime, syndicated organised crime and high-level corruption affecting business integrity and State administration. In this regard, particular attention is paid to crimes where racketeering and money laundering, for example, form the main activities. Important in these cases is the forfeiture of the proceeds of the crime.

The Directorate of Special Operations is authorised to commence investigations pro-actively through the gathering of crime information, to direct investigations and to institute prosecutions.

Effectiveness of counter-terrorism measures

1.9	On page 11 of the third report, South Africa provided assurances that provisions pertaining to deceptive recruitment are covered under paragraph 3 (3) of the anti-terrorism bill, which was later adopted by South Africa as 2004 POCDATARA Act. The Committee notes that paragraph 3 (3) of the bill is not included in the adopted text of the Act, whereas paragraph 3 (2) (c) and (d) of the Act covers recruitment, but not deceptive recruitment, for terrorist purposes. Please explain how deceptive recruitment is addressed in the POCDATARA Act. If it is not so addressed, what provisions does South Africa have to address the problem of deceptive recruitment by terrorists?

1.9 The POCDATARA Act does not make provision for "deceptive recruitment" for terrorist activities. Section 3 of POCDATARA, however, will be applicable in such cases:

Quote

Offences associated or connected with terrorist activities

3. (1) Any person who-

(a) does anything which will, or is likely to, enhance the ability of any entity to engage in a terrorist activity, including to provide or offering to provide a skill or an expertise;

(b) enters or remains in any country; or

(c) makes himself or herself available,

for the benefit of, at the direction of, or in association with any entity engaging in a terrorist activity, and who knows or ought reasonably to have known or suspected, that such act was done for the purpose of enhancing the ability of such entity to engage in a terrorist activity, is guilty of the offence associated with a terrorist activity.

(2) Any person who-

(a) provides or offers to provide any weapon to any other person for use by or for the benefit of an entity;

(b) solicits support for or gives support to an entity;

(c) provides, receives or participates in training or instruction, or recruits an entity to receive training or instruction;

(d) recruits any entity;

(e) collects or makes a document; or

(f) possesses a thing

connected with the engagement in a terrorist activity and who knows or ought reasonably to have known or suspected that such weapons, soliciting, training, recruitment, document or thing is so connected is guilty of an offence connected with terrorist activities.

Unquote

1.10 On page 3 of the fourth report, South Africa mentions the Civil Aviation Offences Act (Act No. 10 of 1972) and the Civil Aviation Safety Regulations of 1981, both of which were, at the time of submission of the report, under review by higher authorities with a view to the incorporation of amendments to bring it into line with Annex 17 of the Chicago Convention. Could South Africa please provide a progress report on the status of these amendments and on the process of their approval by the Transport Ministry and by Parliament?

1.10 A new draft Civil Aviation Offences Bill has been finalised which will replace the Civil Aviation Offences Act, 1972. The Bill will be submitted to Cabinet for approval during the first quarter of 2006. Once approved by Cabinet, the Bill will be submitted to Parliament for consideration.

The Civil Aviation Safety Regulations have been approved and came into force in September 2004.

1.11 The Committee notes with satisfaction that South Africa is a party to eleven of the twelve international counter-terrorism conventions and protocols and would welcome a progress report on South Africa's accession to the 1979 Convention on the Physical Protection of Nuclear Material.

1.11 The Cabinet has approved the Ratification of the Convention on the Physical Protection of Nuclear Material and it will be submitted to Parliament for accession in 2006.

1.12 The Committee takes note of the 27 arrests made in South Africa since 1 January 2001 under the former Internal Security Act. How many terrorists and their supporters have been arrested since the adoption of the POCDATARA Act, and what further action has been taken in those cases?

1.12 No one has been arrested for terrorism since the adoption of the POCDATARA Act on 20 May 2005. However, the requirements of all the international instruments, even those that South Africa has not yet ratified or acceded to have been addressed in the POCDATARA Act.

Effectiveness of customs, immigration and border controls:

1.13 Paragraph 2 (g) of the resolution calls for measures to prevent the counterfeiting, forgery or fraudulent use of identity papers and passports. Without compromising sensitive information, could South Africa please explain the security features it has incorporated in its passports and other travel documents in order to thwart counterfeiters?

1.13 The South African Machine-Readable Passport (MRTD) contains a range of security features to protect it against forgery, including UV features, security overlays and sensitised endpapers. These features are also included in temporary passports and emergency travel certificates.

1.14 On page 23 of the fourth report, South Africa describes the modalities for creation of a new "smart" identification card. The Committee would be pleased to receive a progress report on the decisions reached with regards to the creation of this "smart card".

1.14 The national smart ID card project is in its finalisation stage. It is expected that the first smart ID cards will be issued in 2007.

1.15 What legal provisions exist to prevent persons suspected of involvement in terrorism or the financing of terrorism from entering South Africa?

1.15 In terms of Section 29 of the Immigration Act, 2002 (Act No. 13 of 2002), persons against whom a warrant is outstanding or a conviction has been secured in South Africa or a foreign country in respect of, *inter alia*, terrorism, are prohibited persons who do not qualify for a visa, admission into South Africa, or a residence permit. This section also provides that anyone who is, or has been a member of an

organisation utilising terrorism to pursue its ends, will be regarded as a prohibited person.

Persons can also be declared undesirable by the Director-General of the Department of Home Affairs, on the strength of being a fugitive from justice or having a previous criminal conviction, without the option of a fine for conduct that would be an offence in South Africa.

Undesirable persons are likewise denied admission into South Africa, and are denied visas and/or residence permits.

1.16 On page 23 of the second report, South Africa mentions that the Department of Home Affairs uses entry stop-lists in the issuance of visas and, at South African ports, to prevent the entry of prohibited persons. What is the source of the names placed on these stop-lists? Is the International Criminal Police Organisation (Interpol) one of these sources?

1.16 The source of the names placed on the stop-list is varied. It includes government institutions, various law enforcement agencies and the Interpol National Central Bureau (NCB) Pretoria, which is part of the South African Police Service.

1.17 On page 26 of the fourth report, South Africa mentions that documents for travel purposes are provided to stateless persons who, for 'acceptable reasons', cannot obtain a passport from their country of origin. What criteria are applied in determining whether stateless persons are eligible for South African travel documents? Could South Africa please provide examples of 'acceptable reasons' which would qualify stateless persons denied passports by their countries of origin for South African travel documents?

1.17 The issuing of a document for travel purposes would only be considered if the applicant is a South African permanent residence permit holder, proof is submitted that the person is stateless or cannot obtain a passport from his or her country of origin and needs to travel to a foreign country.

Effectiveness of international co-operation in criminal matters

1.18 The Committee notes with satisfaction the co-operation that exists between the South African Police Service and Interpol. The Committee also notes that South Africa has bilateral agreements for the exchange of information with 12 southern African countries. Do any legal and/or administrative provisions of South African law require such sharing of information and intelligence with other countries, especially those with which South Africa does not have bilateral agreements on that matter?

1.18 The International Co-operation in Criminal Matters Act, 1996, (Act No. 75 of 1996), the South African legislation pertaining to mutual legal assistance, permits the provision of mutual legal assistance to countries with which South Africa does not have bilateral agreements or treaties.

1.19 The Committee regards the use of early warning mechanisms as a key component in the fight against terrorism. In its first report, South Africa mentions an Early Warning Centre that, through the National Intelligence Co-ordinating Committee (NICOC) and the Office of the Ministry of Intelligence, receives relevant intelligence to be used at the domestic level. Could South Africa please describe the role of the Early Warning Centre and its relations with other key domestic agencies that deal with intelligence concerning terrorist activities?

1.19 The South African National Early Warning Centre (NEWC) is situated in NICOC, and is linked to the operational centres of the various South African intelligence and law enforcement agencies. The NEWC therefore provides a co-ordinated early warning response to any domestic or foreign issue requiring the urgent attention of the South African Government. These issues include incidents or threats of terrorism.

1.20 In paragraph 10.3.2 (page 23 of the first report), South Africa mentions that informal requests for mutual legal assistance are entertained "when allowed by South Africa's laws." The Committee would like to know which specific laws and provisions permit South Africa to grant such requests and which could prevent it from doing so.

1.20 The International Co-operation in Criminal Matters Act, No. 75 of 1996, regulates the law in relation to formal requests for mutual legal assistance in the absence of bilateral and/or multilateral treaties between South Africa and other nations.

Section 31 of the International Co-operation in Criminal Matters Act, 1996 reads as follows:

"Nothing in this Act contained shall be construed so as to prevent or abrogate or derogate from any arrangement or practice for the provision of international co-operation in criminal matters otherwise than in the manner provided for by this Act".

This provision, therefore, allows other forms of assistance based on an arrangement or practice existing with a foreign State.

Due to the increase in trans-national and cross-border crime and the growth of international criminal organisations and syndicates, South African courts have held that it is normal for the informal exchanges of evidence and information between law enforcement agencies to take place in the absence of formal requests for mutual legal assistance, provided the information exchanged is not utilised in court processes and is not in conflict with the Constitution or South African law.

In addition, South African courts have stressed that information shared on an informal basis, should not be construed as evidential material and consequently, should such information be required for evidential purposes, then it should be obtained either in terms of the Act and/or a bilateral or multilateral treaty in existence.

Each request, however, is treated on its own merits.

1.21	The Committee welcomes the ongoing development of a training program for countries in the Southern African Regional Police Chiefs Co-operation Organisation (SARPCCO) by the South African Police Service. Such training programs offered to neighbouring countries can improve regional co-operation in the areas of intelligence-sharing and prevention of weapons smuggling. The Committee would appreciate a progress report on the development of the program and any training imparted through it.

1.21 A curriculum has been drafted for regional training on countering terrorism, and training seminars are held from time to time, in which the countries in the Southern African Region participate. This is an ongoing process. Training other than training directly related to counter-terrorism is also of importance, namely training relating to crime intelligence gathering, analysis, firearms training, explosives training, training of sniffer-dogs, Task Force training, etc.

SARPCCO has a training Sub-Committee which continuously assesses needs in the region, co-ordinates training initiatives and the attendance of courses. Training takes place on a multilateral and bilateral basis with the South African Police Service.

The issue of harmonising legislation in the region is also important from an enforcement/training perspective. The Legal Sub-Committee of SARPCCO was mandated to draft a Model Counter-Terrorism Law for the Southern African Region. A draft Law was developed in 2005 for consideration by the Chiefs of Police of SARPCCO in 2006.

1.22 The Committee takes note of Section 11 (b) (iv) of the Extradition Act of 1962 (p. 13 of the third report), which provides for refusal of extradition if the request is considered by South Africa to be politically motivated. Paragraph 3 (g) of resolution 1373 (2001) clearly states that claims of political motivation should not be recognised as grounds for refusing requests for the extradition of alleged terrorists. The resolution's focus is on requests for extraditions and subsequent trials of alleged terrorists, not of the political fugitives envisaged in Section 11 (b) (iv) of the Extradition Act. Would South Africa please clarify the criteria which it uses in determining whether an extradition request is categorised as politically motivated for the purposes of the Act?

1.22 The question implies that the exclusion of the political exception in extradition is not addressed in the POCDATARA Act, which is an incorrect assumption. In the Schedule to the POCDATARA Act, a new section 22 is inserted in the Extradition Act, which provides that in respect of offences relating to terrorist bombing and terrorist financing, extradition may not be refused on the sole ground that it concerns a political offence, or an offence connected with a political offence or an offence inspired by political motives, or that it is a fiscal offence. The POCDATARA Act in section 2 further provides for a general offence of terrorism of which a fairly wide definition of "terrorist activity" is an element.

Section 1(5) of the POCDATARA Act further provides that: **"Notwithstanding any provision in any other law, and subject to subsection (4), a political, philosophical, ideological, racial, ethnic, religious or any similar motive, shall not be considered for any reason, including for purposes of prosecution or extradition, to be a justifiable defence in respect of an offence of which the definition of terrorist activity forms an integral part."** In respect of extradition therefore, section 11(b)(iv) of the Extradition Act, is subject to section 22 of the Act with reference to terrorist bombing offences and terrorist financing offences, and in respect of the general offence of terrorism, subject to section 1(5) of the POCDATARA Act. Subsection (4) referred to, deals with the exclusion of legitimate wars of liberation waged in accordance with the international law.

1.23 The Committee would appreciate information on South Africa's implementation in domestic law of the Southern African Development Community (SADC) Protocols on Extradition and Mutual Legal Assistance in Criminal Matters and of the African Union Convention on Extradition (p. 27 of second report), which make extradition binding upon all parties thereto.

1.23 Although South Africa has ratified the SADC Protocols on Extradition and Mutual Legal Assistance, the two Protocols have not yet entered into force.

As soon as the Protocols enter into force, notice thereof will be published in the Government Gazette and will be binding on South Africa vis-à-vis other SADC State Parties thereto.

The African Union Convention on Extradition has not yet been finalised.

Effectiveness of controls preventing access to weapons by terrorists:

1.24 The Committee notes with satisfaction that South Africa assists countries of its region in the destruction of surplus, redundant and other small arms and light weapons. In addition to the Kingdom of Lesotho, could South Africa please identify other neighbouring countries that have benefited from such assistance and describe the assistance provided in each case?

1.24 South Africa continues to co-operate with countries in the region in the destruction of small arms and light weapons.

In this regard Operation Fifi was carried out in the Democratic Republic of Congo (DRC) on 2 occasions, namely 5 to 9 June 2005 and 4 to 11 August 2005. These were firearm search, seizure and destruction operations. Operation Rachel XI (1) was carried out from 2 to 21 October 2005 in Mozambique. This was the first time that other SARPCCO countries were involved in Operation Rachel, which is normally a bilateral operation. This operation also formed part of the practical assessment of the SARPCCO Cross Border Operations and Weapon Destruction Course, which was presented prior to the operation.

2. Implementation of resolution 1624 (2005)

2.1 What measures does South Africa have in place to prohibit by law and to prevent incitement to commit a terrorist act or acts? What further steps if any are under consideration?

2.1 Section 14 of the POCDATARA Act criminalises threatening, attempting, conspiring, aiding, abetting, inducing, inciting, instigating, instructing, commanding, counselling and procuring for terrorism.

2.2 What measures does South Africa take to deny safe haven to any persons with respect to whom there is credible and relevant information giving serious reasons for considering that they have been guilty of incitement to commit a terrorist act or acts?

2.2 Information regarding persons affiliated to or adhering to organisations utilising terrorism is received from government agencies and Interpol and is inserted into the Visa and Entry Stoplist of the Department of Home Affairs.

2.3 How does South Africa co-operate with other States in strengthening the security of its international borders with a view to preventing those guilty of incitement to commit a terrorist act or acts from entering their territory, including by combating fraudulent travel documents and, to the extent attainable, by enhancing terrorist screening and passenger security procedures?

2.3 Annex 17 of the Chicago Convention contains Standards and Recommended Practices (SARPs) for the safeguarding of international civil aviation. The ICAO Security Manual contains guidance material on the interpretation and implementation of the SARPs. ICAO has also developed under the AVSEC Mechanism a series of Aviation Security Training Packages and organises regional training courses. One of the crucial elements of the ICAO Aviation Security Plan of Action is the ICAO Universal Security Audit Programme (USAP). South Africa is actively participating in all these ICAO security activities. South Africa also has ICAO certified Security Auditors and Inspectors who are doing worldwide audits and inspections on behalf of ICAO. In addition, South Africa has a National Aviation Security Programme.

As regards port security, South Africa has adopted the International Ship and Port Facility Security Code, which requires States to have security plans through which entry and departure of persons can be regulated. In this regard, the Department of Transport has approved security plans for all South Africa's commercial ports. South Africa also requires that all ships (cargo and passenger) submit information regarding passenger and crew lists prior to entering South African ports. The responsibility of verifying the details of passengers and crew on board is vested in the Department of Home Affairs.

The Department of Home Affairs' Movement Control System, on which all travellers are captured, contains warning lists, which are constantly updated with information received from other States in order to prevent the use of unauthorised documents.

2.4 What international effort is South Africa participating in or considering participating in/initiating in order to enhance dialogue and broaden understanding among civilisations in an effort to prevent the indiscriminate targeting of different religions and cultures?

2.4 South Africa supports the efforts of the United Nations and its Member States to enhance dialogue and broaden understanding among civilisations. In addition

South Africa supports the Dialogue among Civilisations Programme of Action on this subject, previously adopted by the United Nations General Assembly.

2.5	What steps is South Africa taking to counter incitement of terrorist acts motivated by extremism and intolerance and to prevent subversion of educational, cultural and religious institutions by terrorists and their supporters?

2.5 Section 3 of POCDATARA ensures that all terrorist activities are criminalised:

Quote

Offences associated or connected with terrorist activities

3. (1) Any person who-

(a) does anything which will, or is likely to, enhance the ability of any entity to engage in a terrorist activity, including to provide or offering to provide a skill or an expertise;

(b) enters or remains in any country; or

(d) makes himself or herself available,

for the benefit of, at the direction of, or in association with any entity engaging in a terrorist activity, and who knows or ought reasonably to have known or suspected, that such act was done for the purpose of enhancing the ability of such entity to engage in a terrorist activity, is guilty of the offence associated with a terrorist activity.

(2) Any person who-

(a) provides or offers to provide any weapon to any other person for use by or for the benefit of an entity;

(b) solicits support for or gives support to an entity;

(c) provides, receives or participates in training or instruction, or recruits an entity to receive training or instruction;

(d) recruits any entity:

(e) collects or makes a document: or

(f) possesses a thing.

connected with the engagement in a terrorist activity and who knows or ought reasonably to have known or suspected that such weapons, soliciting, training, recruitment, document or thing is so connected is guilty of an offence connected with terrorist activities.

Unquote

Section 14 of the POCDATARA Act also criminalises threatening, attempting, conspiring, aiding, abetting, inducing, inciting, instigating, instructing, commanding, counselling and procuring for terrorist activities.

2.6 What is South Africa doing to ensure that any measures taken to implement paragraphs 1, 2 and 3 of resolution 1624 (2005) comply with all of its obligations under international law, in particular international human rights law, refugee law, and humanitarian law?

2.6 South Africa is party to the key human rights treaties including:

- The International Convention on the Elimination of All Forms of Racial Discrimination, 1966;
- The International Covenant on Civil and Political Rights, 1966;
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 and
- The Convention relating to the Status of Refugees, 1951.

Human rights are protected in South African legislation including through the Constitution of the Republic of South Africa, 1996. The Constitution includes a comprehensive Bill of Rights that protects and entrenches *inter alia* equality, human dignity, freedom and security of the person, privacy, freedom of religion, belief and opinion, freedom of expression, freedom of assembly, freedom of association, political rights, freedom of movement and residence and rights for arrested, detained and accused persons.

These rights may only be limited in terms of a law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom. The courts are also required, when interpreting any legislation, to prefer an interpretation that is consistent with international law.

3. Assistance and Guidance

3.1 The Committee wishes to emphasise once more the importance that it attaches to the provision of assistance and advice in connection with the implementation of resolution 1373. The Committee's Directory of Assistance (www.un.org/sc/ctc) is frequently updated to include new relevant information on available assistance. The Committee would appreciate receiving information from South Africa concerning areas where it might be in a position to provide assistance to other States in relation to the implementation of the resolution.

3.1 South Africa continues to provide assistance to other States in the context of its active participation in multilateral fora. For example, South Africa is active in the Southern African Police Chiefs Co-operation Organisation (SARPCCO) which has Legal and Operational Subcommittees, in which issues such as anti-terrorism legislation, firearms, explosives and other related issues are addressed.

The Financial Intelligence Centre (FIC) is a member of the Egmont Group of financial intelligence units. Through the Egmont Group the FIC can share information, including information which may be related to terrorist financing, with a large number of similar institutions around the world.